

## Message Text

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ORIGIN L-03

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----- 075513

R 301436Z JUL 76

FM SECSTATE WASHDC

TO AMEMBASSY BRUSSELS

AMEMBASSY THE HAGUE

AMEMBASSY LUXEMBOURG

INFO USMISSION EC BRUSSELS

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E.O. 11652: N/A

TAGS:EEC, FTRD, SCUL

SUBJECT: CUSTOMS UNION STANDARD UNDER FLORENCE AGREEMENT

REF: EC MISSION TELEGRAM 2302

1. DEPT IS IN PROCESS OF STUDYING LEGAL JUSTIFICATION FOR  
REPLACEMENT BY EUROPEAN COMMUNITY OF COUNTRY OF IMPORTATION  
STANDARD UNDER ANNEX D OF FLORENCE AGREEMENT BY TERRITORY  
OF THE COMMUNITY STANDARD WITH A VIEW TO POSSIBLE REQUEST  
THAT MATTER BE SUBMITTED TO ARBITRATION. IT WILL BE  
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RECALLED THAT UNDER ANNEX D US ENTITLED TO DUTY FREE AD-

MISSION OF SCIENTIFIC INSTRUMENTS FOR CERTAIN APPROVED INSTITUTIONS FOR EDUCATIONAL AND PURE SCIENTIFIC PURPOSES PROVIDED EQUIPMENT OF EQUIVALENT SCIENTIFIC VALUE NOT BEING MANUFACTURED IN "COUNTRY OF IMPORTATION". WE ARE CONCERNED WITH TRADE LOSS RESULTING FROM ADOPTION COMMUNITY TERRITORY STANDARD.

2. IN COURSE OF MEETING WITH EC REPRESENTATIVES JULY 7 THEY REFERRED TO PRACTICE OF UTILIZATION OF CUSTOMS UNION TERRITORY STANDARD UNDER THE FLORENCE AGREEMENT WITH RESPECT TO THE BELGIUM-LUXEMBOURG ECONOMIC UNION (BLEU) AND THE BELGIUM-NETHERLANDS-LUXEMBOURG UNION (BENELUX). THE COUNTRIES INVOLVED IN THESE UNIONS BECAME PARTIES INDIVIDUALLY TO THE FLORENCE AGREEMENT OCTOBER 28, 1957. US BECAME A PARTY ON NOVEMBER 2, 1966. BLEU ORIGINATED IN 1921, BENELUX IN 1944. EC ALLEGED IN NON PAPER (REFTEL PARA 2) THAT BLEU PRACTICE BEGAN IN 1958 UNDER FLORENCE AGREEMENT WHILE BENELUX PRACTICE BEGAN IN FEBRUARY 1971 (BUT SEE PARA 4 BELOW).

3. WE HAVE EXAMINED NEGOTIATING HISTORY OF THE FLORENCE AGREEMENT UP TO THE TIME IT WAS OPENED FOR SIGNATURE IN NOVEMBER OF 1950 AND ALTHOUGH THE REPRESENTATIVES OF BELGIUM, LUXEMBOURG AND THE NETHERLANDS PARTICIPATED IN MEETINGS IN WHICH PRESENT TEXT WAS ATTAINED, NO INDICATION APPEARS OF ANY CLAIM THAT COUNTRY OF IMPORTATION SHOULD BE CONSIDERED AS EQUIVALENT TO THE TERRITORY OF THE CUSTOMS UNION FOR PURPOSES OF ANNEX D WITH RESPECT TO PARTIES TO FLORENCE AGREEMENT WHO ARE MEMBERS OF CUSTOMS UNIONS.

4. WE ARE INTERESTED IN ASCERTAINING PARTICULARS WITH RESPECT TO THE BLEU AND BENELUX PRACTICE AS REVEALED BY THE FILES OF ADDRESSEE EMBASSIES. ONLY INDICATION OF SUCH PRACTICE (EXCEPT FOR RECENT STATEMENTS) THAT HAS COME TO OUR ATTENTION IS AN OPERATIONS MEMORANDUM FROM THE HAGUE EMBASSY DATED AUGUST 9, 1967 AND A HAGUE EMBASSY AIRGRAM A-19 OF JANUARY 18, 1972. REQUEST EMBASSIES TO EXAMINE RELEVANT FILES BACK TO OCTOBER 1958 AND PARTICULARLY AFTER 1966 (WHEN US BECAME PARTY) TO AS-LIMITED OFFICIAL USE

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CERTAIN ANY PRACTICE OF HOST GOVERNMENTS TO APPLY A CUSTOMS UNION STANDARD AND ANY INDICATION WHETHER SUCH APPLICATION WAS DISCUSSED OR ITS LEGAL IMPLICATIONS CONSIDERED. FURTHER WITHOUT GOING TO HOST GOVERNMENTS WOULD LIKE ANY REGULATIONS ISSUED WHICH SHOW THIS PRACTICE AND ANY ESTIMATE AS TO AMOUNT OF TRADE PER YEAR IN SCIENTIFIC INSTRUMENTS OF US OR OTHER COUNTRIES THAT MIGHT HAVE BEEN AFFECTED.

5. US REPRESENTATIVES MADE POINT IN JULY 7 MEETING THAT WE DID NOT CONSIDER THE EVIDENCE OF THE BLEU AND BENELUX PRACTICE MET THE STANDARDS PRESCRIBED BY THE WORLD COURT IN THE NORTH SEA CONTINENTAL SHELF CASE (EXTENSIVE AND VIRTUALLY UNIFORM PRACTICE RECOGNIZED AS BINDING OBLIGATION) FOR THE ESTABLISHMENT OF A CUSTOMARY RULE OF INTERNATIONAL LAW. FURTHER, THE POINT WAS MADE THAT IN ORDER TO EFFECTUATE REPLACEMENT OF COUNTRY OF IMPORTATION STANDARD BY COMMUNITY TERRITORY STANDARD SPECIFIC PROVISIONS HAVE HAD TO BE INSERTED IN RECENT INTERNATIONAL AGREEMENTS SUCH AS THE MULTIFIBER AGREEMENT, TIN AGREEMENT, COFFEE AGREEMENT, HARMONIZATION OF CUSTOMS CONVENTION, ETC. WE WILL WISH TO REVIEW MATTER IN LIGHT OF ANY MATERIAL THE ADDRESSEE EMBASSIES PROVIDE AND EMBASSIES ARE REQUESTED TO SUPPLY ANY MATERIAL EXPEDITIOUSLY. KISSINGER

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## Message Attributes

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